

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE:

B-218214.4

DATE: September 27, 1985

MATTER OF:

Bobnreen Consultants, Inc.

DIGEST:

1. Award made on basis of revised offers at price lower than original offer submitted by protester, which was rejected as nonresponsible, is not objectionable where agency determined awardee was responsible and that its technical approach required less man-hours and supported the reasonableness of awardee's low price.
2. GAO does not consider protests concerning affirmative determinations of responsibility absent a showing that the determination was made fraudulently or in bad faith or that definitive responsibility criteria in the solicitation were not met.
3. It is not the function of GAO to conduct investigations pursuant to the Bid Protest Regulations.

Bobnreen Consultants, Inc. (BCI), protests the award of a contract to Wilderness Electronics (Wilderness) under request for proposals (RFP) No. F04606-84-R-0237, a small business set-aside issued by the United States Air Force, Sacramento Air Logistics Center (Air Force), for the acquisition of services necessary for the correction of errors in approximately 8,000 aircraft production drawings.

We deny the protest in part and dismiss it in part.

The RFP was issued on June 22, 1984, and it stated that award was to be made to the responsible offeror submitting the lowest priced offer which met the RFP requirements. After best and final offers (BAFO's) were received, it was determined that BCI was the low offeror at a price of \$863,192. A preaward survey conducted concluded that BCI was a newly organized company which has never served as a prime contractor for the government and has never performed similar services, as required by the RFP. The survey

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recommended that BCI not be awarded the contract. The contracting officer found BCI to be nonresponsible and, because BCI is a small business, the matter was referred to the Small Business Administration (SBA) for a certificate of competency (COC) determination.

Before SBA rendered a decision on whether or not to grant BCI a COC, the contracting officer discovered defects in the solicitation. Amendment 4 was issued to correct the defects and to set a closing date of April 12, 1985, for the second round of BAFO's. As a result of this, SBA delayed the BCI COC decision pending the outcome of the new round of BAFO's.

In a letter to the Air Force dated March 28, 1985, BCI protested against the need for the amendment and the new round of BAFO's and requested that BCI promptly be awarded the contract. The Air Force rejected BCI's contentions in a letter dated April 5, 1985. BCI subsequently protested on these same grounds to GAO but its protest was untimely filed and not considered on its merits. See Bobnreen Consultants, Inc., B-218214.3, May 31, 1985, 85-1 C.P.D. ¶ 636.

After the second round of BAFO's, Wilderness was evaluated as the low offeror. A preaward survey was conducted and Wilderness was determined to be responsible. Award was made to Wilderness on July 25, 1985.

BCI again argues that amendment 4 was unnecessary, that the amendment did not significantly change the RFP requirements and, therefore, award should be made to BCI at its preamendment price of \$863,192. We will not consider this contention because, as stated above, this Office has already ruled that it is untimely.

BCI objects to the award to Wilderness and the failure to award it the contract at its original price. BCI believes the Air Force has acted improperly. BCI asserts that its low original offer of \$863,192, was rejected allegedly because the Air Force concluded that BCI could not perform the work at the price BCI offered, yet the Air Force has awarded the contract to Wilderness at \$812,850.29, a lower price than BCI's original offer. The record does not show that BCI's price was the primary reason that BCI was determined nonresponsible. Instead, the contracting officer states, and the preaward survey indicates, that BCI was determined to be nonresponsible because it had no previous experience in logistics trackability, the services to be performed. The survey also found that BCI's potential

employees had little relevant experience and that BCI was seriously understaffed. On the other hand, with regard to Wilderness' offer, the agency reports that the preaward survey on Wilderness recommended award to Wilderness. The Air Force also points out that Wilderness' technical approach makes sophisticated use of computer technology to accomplish the task. The Air Force found that this allows the firm to meet the production schedule at a lower cost because fewer man-hours are needed. Thus, the record supports the Air Force's decision not to award to BCI and to make award to Wilderness. We deny this aspect of BCI's protest.

To the extent BCI is now alleging that Wilderness cannot perform at its offered price, this allegation essentially challenges the Air Force's affirmative determination of Wilderness' responsibility. Our Office, however, does not consider protests concerning affirmative determinations of responsibility absent a showing that the determination was made fraudulently or in bad faith or that definitive responsibility criteria in the solicitation were not met. 4 C.F.R. § 21.3(f)(5) (1985); Automatic Data Processing, Inc., B-217413, Jan. 9, 1985, 85-1 C.P.D. ¶ 30. Neither exception is alleged here.

Finally, BCI requests that our Office investigate this entire procurement action. It is not our function, however, to conduct investigations pursuant to our Bid Protest Regulations. BOW Industries, Inc., B-216512, Apr. 17, 1985, 85-1 C.P.D. ¶ 436.

We deny the protest in part and dismiss it in part.

for *Raymond E. Goss*
Harry R. Van Cleave
General Counsel